

NTSB Order No. EA-5210

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 22<sup>nd</sup> day of February, 2006

MARION C. BLAKEY,  
Administrator,  
Federal Aviation Administration,  
  
Complainant,  
  
v.  
  
AERO LEASINGS, INC.,  
  
Respondent.

Docket SE-17625

The Administrator and respondent appeal the January 26, 2006, oral initial decision of Administrative Law Judge William A. Pope, II, following emergency proceedings to revoke respondent's air carrier certificate.<sup>1</sup> By that decision, the law judge affirmed violations of sections 135.25(a)(2), 135.87 and 119.5(l) of the Federal Aviation Regulations (FARs), dismissed alleged violations of FAR sections 119.69(1) and 119.69(3), and

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modified respondent's sanction to a 120-day suspension of its air carrier certificate.<sup>2</sup> For the reasons discussed below, we grant the Administrator's appeal, and deny respondent's appeal.

The Administrator's December 21, 2005, Emergency Order of Revocation, filed as the complaint in this proceeding, alleged the following:

1. At all times material herein Aero Leasings, Inc., d/b/a Air Florida Airlines (hereinafter "Aero Leasings") was and is now the holder of Air Carrier Certificate No. S49A426K.

2. a. The operations specifications held by Aero Leasings state that the system set forth in Section 5 of the operations manual is to be used by the certificate holder to provide operational control of flight operations.

b. Section 5.4 of Aero Leasings['] GOM [General Operations Manual] states the following:

Operational control is the exercise of authority over initiating, conducting, or terminating a flight. The Director of Operations has ultimate responsibility for operational control. He may delegate functions to other personnel but retains responsibility. The chain of command and succession is as follows: 1. Director of Operations 2. Chief Pilot.

3. a. On or about November 9, 2004, Aero Leasings operated civil aircraft N1123S, a Cessna 208B, on a cargo-carrying flight from Fort Lauderdale, Florida, to Long[] Island, Bahamas.

b. At the time of the November 9, 2004 flight, Mr. Melvin Gordon was the Director of Operations for Aero Leasings.

c. Mr. Gordon was unaware of the above flight, did

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<sup>2</sup> The law judge did not make any express findings regarding FAR section 91.9(a), or the Administrator's allegation that respondent lacks the qualifications necessary to hold an air carrier certificate because it failed to execute its responsibilities for maintaining proper operational control as required by FAR section 135.77, and failed to provide service with the highest possible degree of safety in the public interest as required by 49 U.S.C. § 44702(b)(1)(a).

not initiate it or delegate the function to initiate the flight, and did not have operational control or delegate operational control over the flight.

d. Mr. Pervez Khan exercised operational control over the above flight.

e. At the time of the above flight Mr. Pervez Khan was not the Director of Operations or the Chief Pilot for Aero Leasings and did not hold any FAA approved position with Aero Leasings.

f. On or about November 15, 2004, Melvin Gordon submitted his resignation as Director of Operations for Aero Leasings.

g. The stated cause for the above resignation was lack of operational control due to Pervez Khan's dispatching flights.

4. The cargo carried aboard the flight referenced in paragraph 4 above consisted of live animals, specifically seventeen (17) sheep.

5. a. Prior to the above flight, N1123S was reconfigured from a passenger to a cargo configuration.

b. The above re-configuration for cargo consisted of the following:

1. floor was lined with plastic and covered with wood chips; and,

2. two panels of hog-wire were ran [sic] across the aircraft from the floor to approximately 10 to 12 inches from the ceiling and attached to the cabin with plastic ties, making two separate pens, one rear and one forward behind the cockpit.

6. a. The above configuration was not an approved configuration.

b. By reason of the unapproved configuration, N1123S was rendered unairworthy during the above flight.

7. a. The sheep were loaded aboard the aircraft and carried onboard the flight with ten (10) sheep in the rear pen and seven (7) sheep in the forward pen.

b. The sheep were not constrained by any other means and were able to move about within the pen.

c. The Aircraft Flight Manual for the Cessna Model 208B states that the floor of the aircraft has a 200-pound per square foot allowable loading.

d. The sheep aboard the flight weighed at least an average of 122 pounds each.

e. Since the sheep were able to move about within the pen with other sheep, there were no means to assure that the above floor weight limit was not exceeded during the above flight.

8. [withdrawn]

9. a. Aero Leasings has no FAA accepted or approved operations or training procedures for safely transporting animals as air cargo.

b. Aero Leasings has no FAA accepted or approved maintenance procedures for reconfiguring aircraft to safely transport animals as air cargo.

10. a. Section 5.6.3 of Aero Leasings' GOM states that the Director of Maintenance is responsible for overseeing all maintenance.

b. At the time of the November 9, 2004 flight, Mr. Terrance McHugh was the Director of Maintenance for Aero Leasings.

c. Mr. McHugh was unaware of the above flight and did not direct, schedule, or oversee the reconfiguration for the animal cargo.

d. Mr. Pervez Khan initiated and had oversight of the above reconfiguration.

e. At the time of the above flight Mr. Pervez Khan was not the Director of Maintenance for Aero Leasings and did not hold any FAA approved position with Aero Leasings.

11. a. On or about November 10, 2005, Aero Leasings operated civil aircraft N442BK, a Cessna 402, on a passenger-carrying Part 135 flight from Fort Lauderdale, FL, to Treasure [Cay], Bahamas.

b. On or about November 10, 2005, Aero Leasings operated civil aircraft N442BK, a Cessna 402, on a passenger-carrying Part 135 flight from Marsh Harbor, Bahamas to Fort Lauderdale, FL.

c. At the time of the above flights, November 10, 2005, both the Director of Operations and the Chief

Pilot positions were vacant.

d. At the time of the above two flights, Aero Leasings did not have any management or other personnel approved to exercise operational control.

e. Mr. Pervaiz Jehan Zeb (formerly known as Pervez Khan) exercised operational control over the above two flights.

f. At the time of the above flights Mr. Pervaiz Jehan Zeb was not the Director of Operations or the Chief Pilot of Aero Leasings and did not hold any FAA approved position with Aero Leasings.

12. a. The operations specifications held by Aero Leasings indicate that Bilal Khan is the President and Registered Agent of Aero Leasings.

b. By letter dated November 8, 2005, Bilal Khan notified the FAA that he was nominating Mr. Pervaiz Zeb as President of Aero Leasings.

c. Mr. Bilal Khan signed the above letter as "President/Owner" of Aero Leasings.

d. Mr. Bilal Khan is the son of Mr. Pervaiz Zeb.

e. [withdrawn]

f. [withdrawn]

13. a. Mr. Pervaiz Zeb has a history of violations of the Federal Aviation Regulations.

b. Based upon the above violation history, Mr. Zeb would not have been approved by the FAA to hold a required management position or to exercise operational control for an air carrier at the time of the three flights referenced above.

14. As a result, Aero Leasings violated the following section(s) of the Federal Aviation Regulations:

a. Section 135.25(a)(2) in that except as provided in paragraph (d) of this section, no certificate holder may operate an aircraft under this part unless that aircraft is in an airworthy condition and meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment.

b. Section 135.87 in that no person may carry cargo, including carry-on baggage, in or on any

aircraft unless-- (a) It is carried in an approved cargo rack, bin, or compartment installed in or on the aircraft; (b) It is secured by an approved means; or (c) It is carried in accordance with each of the following: (1) For cargo, it is properly secured by a safety belt or other tie-down having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions, or for carry-on baggage, it is restrained so as to prevent its movement during air turbulence. (2) It is packaged or covered to avoid possible injury to occupants. (3) It does not impose any load on seats or on the floor structure that exceeds the load limitation for those components. (4) It is not located in a position that obstructs the access to, or use of, any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment, or located in a position that obscures any passenger's view of the "seat belt" sign, "no smoking" sign, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of the passengers is provided[.] (5) It is not carried directly above seated occupants. (6) It is stowed in compliance with this section for takeoff and landing. (7) For cargo only operations, paragraph (c)(4) of this section does not apply if the cargo is loaded so that at least one emergency or regular exit is available to provide all occupants of the aircraft a means of unobstructed exit from the aircraft if an emergency occurs.

c. Section 119.5(1) in that no person may operate an aircraft under this part, part 121 of this chapter, or part 135 of this chapter in violation of an air carrier operating certificate, operating certificate, or appropriate operations specifications issued under this part.

d. Section 119.69(d)(1) and (3) in that anyone in a position to exercise control over operations conducted under the operating certificate must be qualified through training, experience, and expertise, and must discharge their duties to meet applicable legal requirements and to maintain safe operations.

e. Section 91.9(a) in that except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

By reason of the foregoing facts and circumstances, Aero

Leasings failed in its responsibility to maintain operational control as required by FAR 135.77. Further, by reason of the foregoing, Aero Leasings failed to provide service with the highest possible degree of safety in the public interest as required by 49 USC 44702(b)(1)(a).

As a result of the foregoing, the Administrator finds that Aero Leasings lacks the qualifications necessary to hold an Air Carrier certificate. She therefore has determined that safety in air commerce or air transportation and the public interest require the revocation of the above-mentioned certificate(s). The Administrator further finds that an emergency requiring immediate action exists with respect to safety in air commerce or air transportation. Accordingly, this Order is effective immediately.

An evidentiary hearing was held January 24-26, 2006, in Miami, Florida.<sup>3</sup> The Administrator presented testimony from three FAA inspectors, two of whom were accepted by the law judge to also provide expert testimony regarding Part 135 air carrier certification, compliance with FAA operational control requirements, aircraft airworthiness, and FAA airworthiness certification. The Administrator also presented testimony from the pilot who flew the 2005 flights at issue; the mechanic who reconfigured the aircraft to haul livestock on the 2004 flight; Aero Leasings' director of operations at the time of the 2004 flight; Aero Leasings' director of maintenance; and an employee of the United States Department of Agriculture who witnessed Aero Leasings' configuration of the aircraft and loading of livestock for the 2004 flight. Respondent presented testimony from two

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<sup>3</sup> Prior to the hearing, respondent admitted paragraphs 1, 2, 3(a)-(b), 3(e) in that Pervez Khan was not the chief pilot or director of operations for Aero Leasings, 3(f), 4, 5(a) in that seats were removed from the aircraft, 7(c)-(d), 10(a)-(b), 10(e) in that Pervez Khan was not the chief pilot or director of operations for Aero Leasings, 11(a)-(b), 11(f) in that Pervez Khan was not the chief pilot or director of operations for Aero Leasings, 12(a)-(d), and 13(a) of the complaint. Respondent denied all the alleged violations.

witnesses, the pilot of the 2004 livestock flight, and the professional handler who accompanied the livestock on the 2004 flight. The record contains numerous exhibits that were submitted by both parties.

The law judge's decision contains a thorough summary of the evidence, and we will not repeat it here except as necessary. We adopt the findings and conclusions of the law judge to the extent they are consistent with this opinion and order.

On appeal, respondent argues, essentially, that the law judge erred: (1) in not dismissing as stale those portions of the Administrator's complaint pertaining to the 2004 flight; and (2) in affirming the violations associated with the 2005 flights, because, contrary to his ruling, an authorized person did exercise operation control of those flights.<sup>4</sup> The Administrator argues that her evidence, and the law judge's findings, warrant revocation on account of respondent's established lack of qualification. In support of her argument, the Administrator contends that: (1) the law judge's finding that respondent failed to exercise operational control compels, in and of itself, revocation under Board precedent; (2) her allegations regarding the 2004 livestock flight were not dismissible under our stale complaint rule; (3) the law judge erroneously required that the Administrator demonstrate a "pattern of regulatory non-

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<sup>4</sup> Respondent also argues, in the alternative, that any violations that may have been committed in connection with the 2005 flights were "minor" and the law judge should have imposed, at most, a nominal civil penalty. We need not reach this issue in light of our determination that the Administrator has demonstrated respondent's present lack of qualification to hold an air carrier certificate.



compliance" in order to sustain revocation, and, in any event, her evidence did demonstrate such a pattern; in fact, the law judge characterized respondent's conduct as, among other things, "show[ing] a callous disregard for regulatory compliance [with] its own FAA approved operating procedures"; and (4) the law judge erroneously concluded, contrary to the preponderance of the evidence, that the Administrator did not prove that Pervez Khan exercised unauthorized operational control over the 2004 and 2005 flights.

We turn first to the arguments about whether the 2004 allegations were stale. Our stale complaint rule states:

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising the respondent as to reasons for proposed action under 49 U.S.C. 44709(c), the respondent may move to dismiss such allegations[.]

\* \* \* \* \*

In those cases where the complaint alleges lack of qualification of the respondent, the law judge shall first determine whether an issue of lack of qualification would be presented if all of the allegations, stale and timely, are assumed to be true. If so, the law judge shall deny the respondent's motion.

49 C.F.R. Part 821.33 (2005). The law judge denied respondent's stale complaint motion, finding that the allegations in the Administrator's complaint, if true, raised a legitimate issue of lack of qualification. Specifically, the law judge reasoned:

Here not only the language used in the [complaint], but also the substance and nature of the alleged violations raise an issue of lack of qualification. [T]he complaint charges three incidents separated by more than a year of failure of the

Respondent to comply with its FAA approved operations specifications, by dispatching Part 135 flights when it did not have any management or other personnel approved to exercise operational control. The Board has held that a pattern of regulatory non-compliance should not be tolerated and shows a lack of qualification warranting revocation of an air carrier's operating certificate. See Administrator v. Air East Management, LTD., d/b/a Air East, NTSB Order EA-5089 (2004).

Hearing Transcript (Tr.) at 287.

The law judge properly denied respondent's stale complaint motion, for the complaint, taken as a whole, alleges facts sufficient to support the Administrator's allegation that respondent lacks the qualifications necessary to hold an air carrier certificate. As we said, for example, in Administrator v. Anticola, NTSB Order No. EA-4115 at 7 (1994), "[i]n order to fairly present an issue of qualification, so as to defeat a stale complaint motion, it must be reasonably apparent, in light of existing case law or from the severity of the conduct described in the factual allegations themselves, that revocation would be the appropriate sanction if some or all of the charges in the complaint are proved."

The gravamen of the Administrator's complaint is that: (1) operational control decisions at Aero Leasings were being made, on several occasions more than a year apart, by an unapproved person (indeed, a person who the FAA would in fact not accept in a management position because of his prior admitted history of FAR violations); and (2) Aero Leasings failed to follow its FAA-approved procedures and other FAA regulatory requirements, demonstrating its lack of qualification to operate as an air

carrier. In the best light, such allegations raise issues of competence, and, at worst, they depict an organization that does not respect FAA operational requirements. Under our case law, revocation is the requisite remedial measure for a demonstrated lack of qualification. See, e.g., Administrator v. Frost, NTSB Order No. EA-3856 at 4 (1993) (“[w]hether revocation is appropriate depends on whether the Administrator has demonstrated that respondent lacks qualification to exercise his certificate(s)”); Administrator v. Wingo, 4 NTSB 1304 (1984).

As the law judge correctly noted in denying respondent’s stale complaint motion, we have stated that, “the Administrator is entitled to insist on strict adherence to her regulations and procedures approved by the FAA. Certificate holders are not authorized to depart from approved procedures.” Air East, supra at 6-7 (a case which upheld emergency revocation of an air carrier certificate). The Administrator’s complaint alleged that notwithstanding operations specifications that authorized only the director of operations or the chief pilot of Aero Leasings to exercise operational control, Pervez Khan/Pervaiz Zeb,<sup>5</sup> who did not hold those positions, actually exercised operational control over both the 2004 and 2005 flights. See Complaint, paras. 2a, 2b, 2d, and 11e. In Administrator v. Darby Aviation d/b/a Alphajet International, Inc., NTSB Order No. EA-5159 (2005), we upheld an emergency indefinite suspension order because the

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<sup>5</sup> As noted by the Administrator’s complaint, and explained in the record, Pervez Khan changed his name to Pervaiz Zeb for reasons unrelated to this case. Hereafter, we will refer to him by his current name, Pervaiz Zeb.

evidence demonstrated that the air carrier "failed to maintain operational control." We reached a similar conclusion in Administrator v. Air Maryland, 6 NTSB 1157 (1989), in upholding revocation. In Air East, we found, "a pattern of regulatory noncompliance that should not be tolerated[,]" and upheld revocation.<sup>6</sup> Finally, it is well-settled that a demonstrated disposition to flaunt or ignore important safety regulations is a proper basis for certificate revocation. See, e.g., Administrator v. Oliveira and Morais, NTSB Order No. EA-4995 at 13 (2002). The Administrator's allegations were sufficient to raise legitimate questions about Aero Leasings' qualifications, and, therefore, the law judge properly denied respondent's stale complaint motion.

Respondent's argument that the law judge erred in finding that no Aero Leasings personnel were authorized to exercise operational control on November 10, 2005, is not persuasive. Inspector Kraemer testified that on November 10, 2005, the only person authorized at Aero Leasings to exercise operational control was Gregory Wilcox, its acting chief pilot. Inspector Kraemer had previously authorized the chief pilot to temporarily function in that position while Aero Leasings sought to permanently fill the chief pilot and director of operations positions.<sup>7</sup> Kraemer testified that he visited Aero Leasings on

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<sup>6</sup> We have not had occasion to define what is an unacceptable "pattern" of regulatory noncompliance, but we have made clear that the number of violations is not as significant as the circumstances. See Administrator v. Briles Wings Helicopters, Inc., 3 NTSB 3708, 3709 (1981).

<sup>7</sup> Wilcox was otherwise not qualified to serve as a permanent

November 10, 2005, to deliver a letter, accepted by Pervaiz Zeb on behalf of Aero Leasings, that reaffirmed that Wilcox's authority was to expire that day. According to Kraemer, Zeb was surprised and stated that he (Zeb) had previously caused to be hand delivered a letter dated November 8 (two days before the 2005 flights discussed in the Administrator's complaint) that sought approval for a permanent chief pilot and notified the FAA that "Wilcox [the acting chief pilot] have [sic] been relieved from his duties." See Tr. at 98-101; Administrator's Exhibits ("Ex.") A-13 and A-14 (respectively, the copy of the November 8 Aero Leasings letter provided to Kraemer by Zeb on November 10, and the original mailed letter subsequently received by Kraemer at his office). Respondent's efforts to minimize the evidentiary value of Exs. A-13 and A-14 are not supported in the record, and, indeed, are contradicted by the testimony of Inspector Kraemer (which was expressly credited by the law judge).

Finally, we believe the law judge erred in modifying sanction to a 120-day suspension. The law judge found that in both instances, the 2004 livestock flight and the 2005 series of commercial flights, operational control was, in effect, exercised by persons who were not approved by the FAA to do so. Tr. at 680-81; 684. The law judge also affirmed all of the FAR violations alleged by the Administrator, except for FAR

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(..continued)

chief pilot since he had lost his medical certificate, and the FAA had previously notified Aero Leasings that it would not approve Wilcox as Aero Leasings' director of operations.

sections 119.69(d)(1) and (d)(3).<sup>8</sup> Most importantly, however, the law judge, who had the unique opportunity to hear all of the witnesses testify at the hearing, found the evidence, "sufficient to show at least a propensity to ignore regulatory requirements in the provisions of the Company's own Operations Manual and operations specifications when it is convenient for the Company or inconvenient to observe them," and characterized respondent's conduct as demonstrating, "a callous disregard for regulatory compliance [with] its own FAA approved operating procedures[.]" Tr. at 686-87. Under the circumstances, we conclude the law judge erred in not affirming revocation of respondent's air carrier certificate.<sup>9</sup>

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<sup>8</sup> As the Administrator observes, the law judge failed to make an explicit finding regarding her FAR section 135.77 allegations. Our review of the record, however, indicates that this violation was proven (both on the basis of the entire record, and the law judge's finding that both the 2004 and the 2005 series of flights were initiated by persons not authorized by FAA to do so).

<sup>9</sup> It is not necessary for purposes of our decision that it be determined who the person is who exercised unauthorized operational control over the flights in 2004 and 2005. We note, however, our agreement with the Administrator (for the reasons cited in her brief, at pages 28-31) that the preponderance of the evidence supports a finding that Zeb exercised operational control over the 2004 flight. The law judge's focus on whether Zeb was "charged" in the complaint, appeared at the hearing or "had an opportunity to defend himself" in explaining his decision not to find that Zeb controlled the flights focused on factors irrelevant to these proceedings against Aero Leasings; indeed, Aero Leasings was free to call Zeb as a witness (and his name appeared on respondent's pre-hearing witness list).

We do not agree, however, with the Administrator's contention that the evidence similarly proved that Zeb exercised operational control over the 2005 flights. While that might be the case, as the law judge acceded, we think there was insufficient evidence to reach that conclusion (that Zeb exercised operational control over the 2005 flights) on this record, particularly in light of the uncontroverted testimony by Wilcox regarding his instructions to Zeb to turn the flight over

The law judge's remarks -- confirmed by our own review of the record -- indicate a significant degree of willfulness to respondent's regulatory transgressions, and our case law warrants revocation for such a disposition. See Oliveira and Morais, supra; Air East, supra; Anticola, supra.<sup>10</sup>

In sum, we think this record supports the Administrator's charges that respondent lacks the qualifications required of an air carrier certificate holder, and, accordingly, that revocation of respondent's certificate is the appropriate sanction.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The Administrator's appeal is granted;

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(..continued)

to pilot Giger if Giger passed his FAA examination. The Administrator's reference to our decision in Administrator v. Canfield, 6 NTSB 1 (1988), also appears misplaced. Canfield pertained, in part, to FAR section 135.13(b)(2) which prohibits certain management officials from exercising operational control if they were involved in similar duties at another air carrier that resulted in that carrier's certificate revocation. The Administrator did not charge respondent with violating FAR section 135.13(b)(2) or introduce any evidence regarding Zeb's admitted FAR violation history.

<sup>10</sup> Indeed, we think this record demonstrates lack of qualification even if it could be said only that respondent was very lax in its compliance with FAA-approved procedures and operational regulations (a characterization we find inconsistent with both the law judge's findings and our assessment of the entire record), for it is clear on this record that Aero Leasings has proven itself unable or unwilling to consistently comply with FAA operational requirements. See Administrator v. Somerset Aviation Corp., NTSB Order No. EA-4351 (1995) (violations and pattern of conduct, "suggest either an *inability* or a refusal to comply with the regulations, which demonstrates that Somerset is not qualified to hold an operating certificate") (emphasis added); see also Darby Aviation, supra.

3. The law judge's decision is affirmed, except as modified by this opinion and order;

4. Respondent's motion for oral argument is denied<sup>11</sup>; and

5. The Administrator's Emergency Order of Revocation is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above opinion and order.

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<sup>11</sup> The issues have been fully briefed by the parties and oral argument is not necessary. See 49 C.F.R. § 821.48.



UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*  
In the matter of: \*  
\*  
MARION C. BLAKEY, \*  
Administrator, \*  
Federal Aviation Administration, \*  
\*  
Complainant, \*  
v. \* Docket No.: SE-17625  
\* JUDGE POPE  
AERO LEASINGS, INC., \*  
\*  
Respondent. \*  
\* \* \* \* \*

U.S. Tax Court  
Federal Building  
Courtroom 1524  
51 Southwest 1st Avenue  
Miami, Florida

Tuesday,  
January 24, 2005

The above-entitled matter came on for hearing,  
pursuant to Notice, at 10:30 a.m.

BEFORE: WILLIAM A. POPE, II  
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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On behalf of the Respondent:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE POPE: This is a proceeding under the provisions of 49 U.S.C. Section 44709, formerly Section 609 of the Federal Aviation Act, and the provisions of the Rules of Practice in Air Safety Proceedings, of the National Transportation Safety Board.

Aero Leasings, Inc., has appealed the Administrator's Emergency Order of Revocation, dated December 21, 2005, which pursuant to Section 821.31(a) of the Board's Rules, serves as the complaint, in which the Administrator ordered the revocation of air carrier certificate number S49A426K, because it allegedly violated Sections 135.25(a)(2), 135.87, 119.51, 119.69(d)(1) and (3), and 91.9(a) of the Federal Aviation Regulations.

In its answer to the complaint, the Respondent admitted paragraphs 1, 2(a) and (b), 3(a), (b), (c) and (d), and so much of paragraph of 3(e) as provides that Pervez Khan was not the Director of Operations or the Chief Pilot of Aero Leasings but denied the rest of paragraph 3(e), paragraph 3(f), paragraph 4, admitted them, and so much of paragraph 5, as provides that seats were removed from the aircraft and denies

1 in all other respects, paragraph 7(c) and (d), paragraph 10(a)  
2 and (b), and so much of (e) as provides that Pervez Khan was  
3 not the Director of Operations or the Chief Pilot of Aero  
4 Leasings, Inc., paragraph 11(a) and (b), so much of 11(f) as  
5 provides that Pervez Khan was not the Director of Operations or  
6 the Chief Pilot for Aero Leasings, Inc., and denies in all  
7 other respects, paragraph 12(a), (b), (c) and (d), and  
8 paragraph 13(a). All other paragraphs of the complaint were  
9 denied.

10 Prior to the hearing, the Administrator withdrew  
11 paragraphs 8, 12(e) and (f).

12 Based on the Respondent's answer, this much is  
13 admitted. The operations specifications of Aero Leasings,  
14 Inc., doing business as Air Florida Airlines, the holder of air  
15 carrier certificate number S49A426K, states that the Operations  
16 Manual is to be used to provide operational control of flight  
17 operations. Section 5.4 of the Aero Leasings GOM provides that  
18 the Director of Operations has ultimate responsibility for  
19 operational control. He can delegate functions to other  
20 personnel but he retains responsibility. The chain of  
21 succession in command is Director of Operations and then Chief  
22 Pilot.

23 On or about November 9, 2004, Aero Leasings operated  
24 civil aircraft N1123S, a Cessna 208B, on a cargo carrying  
25 flight from Fort Lauderdale, Florida, to Long Island, Bahamas.  
26 The cargo were 17 live sheep. Prior to the flight, N1123S was  
27 reconfigured from a passenger to a cargo configuration.

1           At that time, Melvin Gordon was the Director of  
2   Operations. He was unaware of the flight, did not initiate it  
3   or delegate the function to initiate the flight, and did not  
4   have operational control over the flight. He submitted his  
5   resignation as Director of Operations on or about November 15,  
6   2004.

7           Operational control over the flight was exercised by  
8   Pervez Khan. At the time of the flight, he was not the  
9   Director of Operations or the Chief Pilot.

10          The Aircraft Flight Manual for the Cessna Model 208B  
11   states that the aircraft has a 200 pounds per square foot  
12   allowable loading. The sheep weighed at least an average of  
13   122 pounds each.

14          Section 5.6.3 of Aero Leasings' GOM states that the  
15   Director of Maintenance is responsible for overseeing all  
16   maintenance. At the time of the flight, Terrence McHugh was  
17   the Director of Maintenance of Aero Leasings. Pervez Khan was  
18   not at that time the Director of Maintenance.

19          On or about November 10, 2005, Aero Leasings operated  
20   civil aircraft number N442BK, a Cessna 402, on a passenger  
21   carrying Part 135 flight, from Fort Lauderdale, Florida, to  
22   Treasure Cay, Bahamas. On or about November 10, 2005, Aero  
23   Leasings operated civil aircraft N442BK, a Cessna 402, in a  
24   passenger carrying Part 135 flight, from Marsh Harbor, Bahamas,  
25   to Fort Lauderdale, Florida.

26          The operations specifications held by Aero Leasings  
27   indicate that Bilal Khan is the President and registered agent

1 of Aero Leasings. By letter dated November 8, 2005, Bilal Khan  
2 notified the FAA he was nominating Pervaiz Zeb as President of  
3 Aero Leasings. Pervaiz Zeb was formerly known as Pervez Khan.  
4 Bilal Khan signed the letter as President/owner of Aero  
5 Leasings. Bilal Khan is the son of Pervaiz Zeb, formerly known  
6 as Pervez Khan.

7 Pervaiz Zeb, formerly known as Pervez Khan, has a  
8 history of violations of the FARs.

9 Following is a summary of the evidence introduced  
10 during the case.

11 The Administrator's first witness was Aviation Safety  
12 Inspector Richard Kraemer, who was accepted as an expert in  
13 civilian air carrier certification under Part 135 and  
14 operational control compliance with manuals accepted by the  
15 FAA.

16 On November 9, 2004, Inspector Kraemer was part of a  
17 surveillance group that observed a flight by an Aero Leasings'  
18 aircraft on that date. He arrived at the ramp in time to see  
19 the aircraft taxiing away from the ramp. He could see bobbing  
20 animal heads through the window of the aircraft and saw one  
21 animal walk by three windows.

22 Pervez Khan was on the ramp, and Inspector Kraemer  
23 asked him for a copy of the load manifest. Pervez Khan opened  
24 the door of Aero Leasings' facility, and after looking inside,  
25 said he could not find the manifest. Thirty minutes later, he  
26 provided what he said was the manifest. That's Exhibit A-2.

27 Inspector Kraemer asked that the Director of

1 Operations, Melvin Gordon, be summoned. In the meantime, he  
2 witnessed another Inspector interviewing the Director of  
3 Maintenance, Terrence McHugh, and Jorge Gonzalez, a mechanic.  
4 McHugh said he had no knowledge of the flight that had just  
5 taken off and had not authorized the configuration of the  
6 aircraft to haul animals.

7 Gonzalez said he had installed materials for  
8 constraint of the animals that did not seem to him to be in  
9 accordance with FAA requirements.

10 The operations specifications for Aero Leasings,  
11 Exhibit A-3, issued on June 29, 2004, and still in effect until  
12 November 18, 2004, show that Melvin S. Gordon was the Director  
13 of Operations and Terrence McHugh was the Director of  
14 Maintenance. The Chief Pilot was not filled.

15 A-4 is the operations specifications of Aero Leasings  
16 in effect since May 16, 2003. It says the operational control  
17 and flight locating requirements are defined in Section 5, page  
18 5.3 of the Operations Manual.

19 A-5 is an excerpt from Aero Leasings' General  
20 Operations Manual which in paragraph 5.4, states that the  
21 Director of Operations has ultimate responsibility for  
22 operational control. He may delegate functions to other  
23 personnel but retains responsibility. The chain of succession  
24 in command is (1) the Director of Operations, (2) Chief Pilot.

25 The pilot-in-command has operational control for the safety of  
26 the flight from the moment he accepts the aircraft for a flight  
27 until completion of the flight.

1           About an hour after the flight departed on November  
2   9, 2004, Director of Operations, Melvin S. Gordon, arrived.  
3   Inspector Kraemer asked to inspect the Company's FAA required  
4   records, but Gordon said he did not have the key to the room  
5   they were stored in. A man named Hanis Butt, who had the key,  
6   was called in and opened the room. He had no management role  
7   in Aero Leasings but was a long time associate of Pervez Khan.  
8   Inspector Kraemer examined and copied the records.

9           Gordon said he knew nothing about the flight or where  
10  it was going. He said he could not contact the flight in the  
11  air but perhaps Pervez Khan could.

12           Inspector Kraemer met the flight after it returned to  
13  Fort Lauderdale. The captain was Greg Wilcox. An animal  
14  trainer was on board. Inspector Kraemer and Aviation Safety  
15  Inspector Morgan inspected the interior of the aircraft which  
16  was bare and smelled of deodorants. Captain Wilcox said the  
17  people on the island where the sheep were delivered, had  
18  removed the materials installed before transporting the  
19  animals.

20           A-6 is the flight log for the flight on 11/09/05 in  
21  N1123S. It shows that on the way back to Fort Lauderdale, the  
22  aircraft stopped at Nassau. The Director of Operations said he  
23  did not authorize that stop and knew nothing about it.

24           A-7 is a copy of the specification sheet for the ties  
25  called TY-RAP used to attach hog wire, a wire restraint to  
26  contain animals, to the aircraft's structure.

27           A-8 is a typed letter to Inspector Kraemer dated



1 November 15, 2004, from Melvin S. Gordon, who hand delivered it  
2 to Inspector Kraemer.

3 A-9 is a resignation letter apparently signed by  
4 Melvin Gordon dated November 15, 2004, which he also gave to  
5 Inspector Kraemer.

6 A-10 is a letter from Melvin S. Gordon dated November  
7 15, 2004, to Pervez Khan stating he had resigned as the  
8 Director of Operations effective November 17, 2004. The letter  
9 states, "Due to legal circumstances, I am forced to resign  
10 immediately." Inspector Kraemer says the letter was hand  
11 delivered to him on January 1, 2006, by Gordon. It bears a  
12 note to that effect with Kraemer's initials.

13 A-11 is a letter dated September 29, 2005, to  
14 Inspector Kraemer from Gregory T. Wilcox, stating that due to  
15 his medical status, he was ineligible to hold the position of  
16 Chief Pilot of Aero Leasings. He asked to be considered as  
17 Director of Operations, and that Aero Leasings be given 60 days  
18 to hire a new Chief Pilot.

19 A-12 is a letter dated October 11, 2005, from  
20 Inspector Kraemer to Bilal Khan, President of Aero Leasings,  
21 Inc., in which Inspector Kraemer said he was unwilling to  
22 consider Wilcox for any FAA management position but would allow  
23 him to continue in his present position as the only person  
24 authorized to exercise operational control for Aero Leasings  
25 for 30 days or until another person was authorized to exercise  
26 operational control as approved by this office, whichever comes  
27 first.

1           A-13 is a letter dated November 10, 2005, addressed  
2 to Bilal Khan, President of Aero Leasings, which Inspector  
3 Kraemer delivered to Pervez Khan at 16:30 local time, and  
4 Pervez Khan signed for it. The letter states that in his  
5 letter of November 8, 2005, Bilal Khan did not submit any  
6 applicants for Director of Operations or Chief Pilot, and as of  
7 this date, November 10, 2005, the 30 day grace period that  
8 Inspector Kraemer authorized in his October 11, 2005 letter has  
9 expired. The letter goes on to state that at this time, no one  
10 is authorized to exercise operational control for operations  
11 under 14 C.F.R. 135 for Aero Leasings.

12           A-14 is a letter dated November 8, 2005, stating  
13 delivery by U.S. Mail, to Inspector Kraemer, in which Bilal  
14 Khan says he is submitting a resume of Felix Rodriguez who he  
15 is nominating for Chief Pilot and that Mr. Wilcox has been  
16 relieved from his duties. Inspector Kraemer received this  
17 hand-delivered copy at 17:00 local time, on November 10, 2005,  
18 and initialed that notation. It did not have a resume attached  
19 to it.

20           A-14(a) is the letter delivered by mail to Inspector  
21 Kraemer's desk on November 14, 2005, to which was attached a  
22 resume of Felix Rodriguez.

23           Inspector Kraemer said he interviewed the pilot,  
24 named Giger, who was the pilot of the November 10, 2005 flight,  
25 listed in the complaint and he said Pervaiz Zeb, formerly known  
26 as Pervez Khan, told him to take the flight. Inspector Kraemer  
27 said that there was no one authorized to exercise operational

1 control for Aero Leasings on November 10, 2005.

2 A-15 is a flight log dated 10 November. At the top  
3 for Air Florida's aircraft, N442BK, showing that it departed  
4 from Fort Lauderdale at 2:20 p.m. on a Part 135 flight to TLB  
5 in the Bahamas, and then departed for Marsh Harbor, Bahamas on  
6 a Part 91 flight, at 3:35 p.m., and then departed from Marsh  
7 Harbor for Fort Lauderdale at 16:34 or 4:34 p.m., on a Part 135  
8 flight and arrived in Fort Lauderdale at 5:55 p.m.

9 A-16 is an excerpt from FAA Order 8400.10, which is  
10 guidance for FAA Aviation Safety Inspectors concerning  
11 operational control.

12 On cross-examination, Inspector Kraemer agreed that  
13 the Director of Operations does not have to be present every  
14 time a flight is dispatched or returns. He stated that on  
15 November 9, 2004, he saw animal heads bobbing in the window of  
16 the aircraft and saw one head moving past three windows. The  
17 animals appeared to have light colored fur and gray or white  
18 noses. He said he did not see all 17 sheep that the  
19 veterinarian said were on board the flight. He identified the  
20 photograph marked R-1 as a picture of a Cessna 208B that looked  
21 like the aircraft he saw on November 9, 2004. He said the  
22 aircraft was 100 feet away from him and was moving diagonally  
23 away from him.

24 He identified R-5 as an excerpt from Aero Leasings'  
25 General Operations Manual concerning transportation of pets.  
26 He said Melvin Gordon, approved as Director of Operations on  
27 June 29, 2004, said he was aware of a possible flight on

1 November 9, 2004, but did not know where it was going or what  
2 it was taking.

3 Inspector Kraemer said that A-5 states that after an  
4 aircraft is released, the pilot-in-command has operational  
5 control of it for safety.

6 Inspector Kraemer said that in the letter marked A-9  
7 to him, addressed to the Flight Standards District Office in  
8 Fort Lauderdale, dated November 15, 2005, Melvin Gordon said,  
9 "I am resigning because I have no operational control. Pervez  
10 Khan dispatches flights at his own will." He said the November  
11 10th flight was assigned by Wilcox, but on that date, he was  
12 not authorized to make the assignment.

13 Dr. Julie Gauthier, called as a witness by the  
14 Administrator, is a Department of Agriculture veterinary  
15 medical officer who was present and observed the loading of the  
16 November 9, 2004 flight by Air Florida transporting 17 sheep.  
17 She said she was assigned to be there because of problems with  
18 other flights by the carrier. She said she had certified the  
19 sheep were healthy and carried no communicable disease. She  
20 watched them being loaded into a Caravan aircraft through an  
21 open cargo door on the left side of the aircraft.

22 All the seats had been removed from the aircraft  
23 except those of the pilot and the copilot. There was a plastic  
24 covering on the floor and wood shavings. Wire ties were used  
25 to fix hog panels to the aircraft to create two cargo areas for  
26 the sheep. A vinyl curtain and then a hog panel blocked the  
27 rear end of the aircraft. She thought there were 10 sheep in

1 the forward compartment, and that they were cramped, but only  
2 for a short flight. She said that seven sheep were in the rear  
3 compartment, but the curtain had to be moved forward, reducing  
4 the size of the compartment, because the tail support could not  
5 be removed from underneath the aircraft. After the sheep were  
6 moved, with effort, the tail support was moved.

7 She said the sheep were pregnant ewes being sent to  
8 the Bahamas as breeding stock. She said they were in excellent  
9 condition. She said she thought the enclosures were unusual.  
10 She said that the enclosures in the aircraft were more like  
11 kennels because the attendant must be able to access the  
12 animals at anytime. She said the hog panels are made of  
13 crisscrossed welded metal rods and are 34 inches by 16 feet.

14 Larry Baker was called out of turn by the Respondent  
15 with the agreement of the Administrator. He said he is a  
16 consultant in livestock export, among other things, and travels  
17 all over the world. He had a contract with the Knoll Brothers  
18 in the Bahamas to get the sheep and transport them to the  
19 Bahamas. He drove the animals 1300 miles by truck to Fort  
20 Lauderdale. He said he knows that weight cannot be allowed to  
21 shift in an aircraft. He provided the barrier system used on  
22 the Respondent's November 9, 2004 flight. It was adequate to  
23 ship the sheep. He said animals quickly learn to brace  
24 themselves on their feet in moving vehicles. He said he was  
25 given the cubic feet available in the aircraft and figured the  
26 number of sheep that would fit in the cargo space. He said he  
27 was in the aircraft for the flight and the sheep were braced

1 and did not move about. He did not see any sheep move from  
2 window to window. He said the barriers were removed in the  
3 Bahamas, and he assisted in cleaning out the interior, but it  
4 was not disinfected, and there was still sheep manure in the  
5 aircraft. He said he weighed the sheep and the average weight  
6 was 122 pounds.

7 Baker admitted that he did not know if the livestock  
8 panels were approved by the FAA. He said he helped set up the  
9 barrier panels in the aircraft using the sketch sent to him by  
10 Captain Wilcox. He said he doubled up the wire ties used to  
11 attach the barrier to the aircraft's fuselage and floor. He  
12 said he could view all of the animals from his seat. He said  
13 they did not move, but braced themselves as animals do in a  
14 moving vehicle.

15 Jorge Gonzalez, called by the Administrator, was an  
16 aircraft mechanic employed by Aero Leasings. He prepared  
17 N1123S for transporting animals on November 9, 2004. He was  
18 told to do that by Pervez Khan. Director of Maintenance McHugh  
19 was not there. He followed previously used instructions for  
20 the transport of sheep, using specifications given to him by  
21 Pervez Khan at that time. He said that he put cardboard on the  
22 floor and a plastic cover over the cardboard and wood chips  
23 over that. He removed the seats from the aircraft and put up  
24 wire dividers to create two compartments. He used plastic wire  
25 raps to secure the dividers. A&P mechanic, Jarro, signed off  
26 on the reconfiguration in the logbook. He looked at and  
27 approved Gonzalez's work.

1           Gonzalez identified Exhibit A-7 as a document  
2 describing the TY-RAPs used to attach the barrier to the  
3 aircraft. They were made of nylon, but at the time he did not  
4 know if they were FAA approved. Later he was told they were  
5 FAA approved. The barriers were tied to attachment points in  
6 the aircraft used to secure cargo. He said that Pervez Khan  
7 was present with the animals and the trainer and told him to do  
8 the reconfiguration. Wilcox was there but did not give him  
9 specific directions.

10           Melvin Gordon testified for the Administrator. He  
11 said he was the Director of Operations for Aero Leasings on  
12 November 9, 2004. He said his duties were to initiate and  
13 cancel flights and make sure that crew flight and duty times  
14 did not exceed the limit. He said he was not aware of the  
15 November 9, 2004 flight to haul livestock until he came into  
16 the Company office to pick up his paycheck on November 9, 2004.  
17 He was greeted at the door by four or five FAA Inspectors, and  
18 was asked if he knew anything about the sheep flight. He said  
19 he did not.

20           He testified that he did not have operational control  
21 of that flight. He said that the mechanics told him that Khan  
22 had released the flight.

23           He said he normally looked at the status board to see  
24 what flights were booked. He said unless he saw something that  
25 concerned him, the flights were approved as far as he was  
26 concerned. If he saw something that concerned him, he would  
27 ask the person who scheduled the flight about it.

1           He said people in reservations determined who would  
2 be the pilot, and he looked at the flight logs to make sure the  
3 pilots would not be flying while out of time, and he looked for  
4 open items in the flight log. If he found by checking flight  
5 and duty times that the pilot was out of time, he would tell  
6 the reservation people that the pilot could not fly because he  
7 was out of time.

8           He said he did not recall seeing this flight on the  
9 status board before November 9, 2004, and he did not look at  
10 the board after the Inspectors questioned him.

11           He said he felt that he had the authority to question  
12 flights if he saw something wrong. If the flight looked to be  
13 all right, he approved it in his mind.

14           He said that Aero Leasings did not have a procedure  
15 for transporting livestock.

16           He said he wrote the letter marked Exhibit A-8 to  
17 Mr. Kraemer in response to the letter of investigation he  
18 received from the FAA.

19           Gordon said he resigned as Director of Operations  
20 effective November 17, 2004, because he had lost operational  
21 control. He said he thought it was in his best interest to  
22 depart. Gordon said he gave A-10 to Khan personally on  
23 November 15, 2004. When Khan asked why he was resigning, he  
24 said it was just because of legal circumstances and in his best  
25 interest. He said by legal circumstances, he meant that he was  
26 losing operational control. He said the loss of operational  
27 control had been going on since two months after he started



1 working for Aero Leasings, but November 15th was the first time  
2 he had made it known.

3 He said that on November 9, 2004, there was only one  
4 pilot for Aero Leasings. He did not ask Wilcox about the  
5 November 9, 2004 flight that day.

6 Terrence M. McHugh was Aero Leasings' Director of  
7 Maintenance on November 9, 2004. He is well qualified in  
8 aircraft maintenance. He said he had worked previously for  
9 P.J. Khan, Pervez Khan, as Director of Maintenance for Air  
10 Florida.

11 He said that he was aware that an inquiry had come in  
12 about a flight to transport animals before the flight took  
13 place. He said Aero Leasings' GOM has procedures for carrying  
14 pets but not for hauling livestock. He said he did not know of  
15 the flight before it left, but the next day he found out that  
16 there had been a change of configuration of the aircraft which  
17 was signed off by a mechanic as shown in Exhibit A-6.

18 He said that after the Inspectors arrived on November  
19 9, 2004, he talked to Mechanic Gonzalez who told him what he  
20 had done to reconfigure the aircraft and told him that he had  
21 helped load the sheep in the pens or barriers in the aircraft.  
22 Gonzalez said the handler brought the pens. He said he got the  
23 tie straps from the Company's parts room.

24 McHugh said he determined that the tie straps were  
25 approved by the FAA and that they were the proper strength. He  
26 did not himself see the pens or the restraining system used or  
27 the straps actually used. Before this flight, he did not know

1   that Aero Leasings had carried animals earlier, but he later  
2   became aware of such a flight before he became Director of  
3   Maintenance.

4           Aviation Safety Inspector Paul Snead, accepted as an  
5   expert in aircraft certification and airworthiness, testified  
6   that the plastic cable ties called TY-RAP shown on Exhibit A-7,  
7   are approved for aircraft use by the FAA but not for the  
8   purpose of securing cargo. He said that the TY-RAPs that come  
9   in various lengths and tensil strengths are used to secure  
10  bundles of wire.

11          Aviation Safety Inspector William Standing testified  
12  that on November 10, 2005, he administered an oral exam as part  
13  of a flight test to Herman Giger, a new pilot for Aero  
14  Leasings. He said he passed Giger on the oral exam and told  
15  him he could act as pilot-in-command for Aero Leasings.

16          Herman Giger who holds an ATP and other ratings said  
17  he was hired by Captain Gregory Wilcox, who he had known for  
18  some time, as a pilot for Aero Leasings in late October 2005.  
19  He said he passed the oral part of the flight test on November  
20  10, 2005, and was authorized to fly as pilot-in-command of Aero  
21  Leasings aircraft.

22          He said he was told by Greg Wilcox to replace P.J.  
23  Khan, another pilot as pilot-in-command of a three leg  
24  passenger carrying Part 135 flight to the Bahamas on November  
25  10, 2005. He said that Wilcox was present at the aircraft when  
26  the flight boarded, and he took off.

27          The Respondent's only witness was Gregory Wilcox who

1 holds an ATP, various ratings and has over 5,000 flight hours.

2 He started as a pilot with Aero Leasings at the Company's  
3 inception in January 2004.

4 On November 9, 2004, he was the only qualified pilot  
5 listed on the Company's operations specifications. He said the  
6 Company had two aircraft but at that time he was the only  
7 qualified pilot. The Director of Operations was Mel Gordon.  
8 Terry McHugh was the Director of Maintenance. The position of  
9 the Chief Pilot was vacant. Bilal Khan was the president. He  
10 described a display board showing flights for 35 days kept in  
11 the offices of Aero Leasings.

12 He said the call for transporting the sheep came in  
13 three or four weeks prior to the flight, and was displayed on  
14 the board. He said there were three other flights transporting  
15 sheep while Gordon was the Director of Operations. Wilcox said  
16 he oversaw all the loading of the sheep. Wilcox said the  
17 carriage of pets is authorized by the GOM and that authorizes  
18 the carriage of sheep.

19 He said he was never informed by Bilal Khan in  
20 November 2005 that he had been dismissed or replaced as the  
21 Chief Pilot. For the flight on November 10, 2005, he said he  
22 assigned P.J. Zeb to be pilot-in-command but requested him to  
23 reassign the flight to Giger if he passed his check. He agrees  
24 that Zeb did not have the authority to reassign pilots on his  
25 own.

26 FINDINGS AND CONCLUSIONS

27 Melvin Gordon, while he was Director of Operations,

1 including on November 9, 2004, essentially exercised what might  
2 be called negative control. Gordon did not schedule charters  
3 or assign crews to aircraft to fulfill charters. Requests for  
4 Part 135 flights were usually received by Aero Leasings'  
5 reservation person and the charter and the crew were posted on  
6 a status board kept in the offices of Aero Leasings. Gordon  
7 looked at the status board and checked to be sure the assigned  
8 pilot was not violating time and duty requirements. If he saw  
9 something that concerned him about the flight, he would ask the  
10 reservation person about it. For example, he said he would  
11 tell them that a pilot out of hours could not make the flight.  
12 Unless he disapproved of the flight, it would take place as  
13 scheduled without further action by him. He took no other  
14 action if he did not see a problem with the flight, as the only  
15 action he took with respect to charters was to question or  
16 disapprove some aspect of them. The authority that he  
17 exercised was essentially negative authority. He did not make  
18 a record anywhere in the company's records of flights with  
19 which he found no problems.

20           There is some evidence that Gordon may have known  
21 before the November 9, 2004 flight of what he called a possible  
22 flight on that day, but he said he did not know where the  
23 flight was going and what it was going to carry.

24           There is also some possibility from the evidence that  
25 the sheep were the subject of jokes made by office personnel of  
26 Aero Leasings, some of them while Gordon was around.

27           I had the opportunity to observe his testimony and

1 have weighed his possible motives for lying. I find him to be  
2 a credible witness with regards to not knowing enough about the  
3 flight on November 9, 2004, to approve or disapprove of it.

4 That was the situation with respect to the flight on  
5 November 9, 2004, in which sheep were transported to the  
6 Bahamas. He did not disapprove the flight because he said he  
7 had not seen it on the status board, and the flight took place.

8 The Respondent was not able to produce any evidence  
9 or records that Gordon had approved of the flight. It was not  
10 the company's business practice to keep records of charter, at  
11 least tacitly approved by either the Director of Operations or  
12 the Chief Pilot. However, the Company is not charged with a  
13 record keeping violation.

14 Exhibit A-5, an excerpt from the Company's General  
15 Operations Manual places operational control in the Director of  
16 Operations or the Chief Pilot. Paragraph 5.4 defines  
17 operational control as the exercise of authority over  
18 initiating, conducting or terminating a flight, and places  
19 ultimate responsibility for operational control in the Director  
20 of Operations. It says that he can delegate functions to other  
21 personnel but retains responsibility and shows the chain of  
22 command as the Director of Operations and then Chief Pilot.

23 As interpreted by the Administrator, that means that  
24 the only other person to whom responsibility can be delegated  
25 is the Chief Pilot. At the time of the November 9, 2004  
26 flight, that position was vacant. So the exercise of authority  
27 over initiating, conducting or terminating flights rested

1 solely with Melvin Gordon as the Director of Operations.

2           The wording of Section 5.4 of the General Operations  
3 Manual concerning delegation of functions is not as clear as  
4 the Administrator contends. I do not find that it can  
5 reasonably be interpreted to preclude the delegation of  
6 authority to someone other than the Director of Operations or  
7 the Chief Pilot, to at least initially book charters and assign  
8 crews and aircraft. However, if such functions are initially  
9 performed under a delegation of authority by someone other than  
10 the Director of Operations or the Chief Pilot, those decisions  
11 or actions must be specifically approved by the Director of  
12 Operations or the Chief Pilot. As the post of Chief Pilot was  
13 vacant at that time, only the Director of Operations could  
14 exercise that authority on November 9, 2004.

15           Clearly that did not happen with regard to the  
16 November 9, 2004 flight. The only person who could approve of  
17 and have final responsibility for initiating, conducting or  
18 terminating that flight at that time was the Director of  
19 Operations Gordon. Based on his testimony, in the absence of  
20 any Company records to contradict his testimony, I find that he  
21 did not approve the flight, and was it therefore operated by  
22 the Respondent contrary to its General Operations Manual and  
23 operations specifications contained in the General Operations  
24 Manual since the Respondent is responsible for the actions of  
25 its employees and provided no system under which the Director  
26 of Operations was required to report approval of flights.  
27 Therefore, I find that Respondent violated Section 119.51.

1           There is no provision in the Respondent's General  
2   Operations Manual covering the transportation of livestock.  
3   There are provisions for transporting pets and service animals  
4   such as seeing eye dogs. The suggestion by Captain Wilcox, who  
5   was the pilot of the aircraft that transported the 17 sheep,  
6   that they could be somebody's pets, is absurd. The evidence in  
7   this case is that they were pregnant ewes being delivered to a  
8   purchaser in the Bahamas for use as breeding stock. They were  
9   clearly therefore livestock and not pets or service animals.

10           By transporting the sheep without authority in its  
11   General Operations Manual to carry livestock as cargo or  
12   without standards for transportation of livestock, the  
13   Respondent violated FAR Section 135.87.

14           The Respondent is also charged with a violation of  
15   Section 135.25(a)(2) and 135.87 in that the sheep were  
16   transported in an unairworthy aircraft operated by the  
17   Respondent and were not secured by approved means.

18           There's no convincing evidence that the barrier  
19   system used to restrain the sheep was unapproved. The only  
20   convincing evidence that the aircraft used to carry the sheep  
21   was unairworthy while carrying them, is found in Inspector  
22   Snead's testimony where he said that although the plastic ties,  
23   called TY-RAP, see Exhibit A-7, were approved for use in  
24   aircraft, they were not approved by the Administrator to secure  
25   a barrier to the aircraft. On the other hand, there was  
26   evidence that the doubled up ties had sufficient tensil  
27   strength for that purpose. So there is no evidence of an

1 actual safety hazard.

2 I find this sufficient to be a violation of Section  
3 135.25(a)(2) and 135.87, but not one so serious as to impair  
4 the safety of the aircraft or to warrant alone or in  
5 combination with other violations the sanction of revocation.

6 The flights listed on November 10, 2005, in the  
7 complaint, were also dispatched without approval from either  
8 the Director of Operations or the Chief Pilot, as required by  
9 paragraph 5.4 of the Company's General Operations Manual,  
10 Exhibit A-5. Both of those positions were vacant and there was  
11 no one else who could exercise operational control of  
12 initiating, conducting or terminating the flights. There is no  
13 dispute that the Director of Operations position was vacant at  
14 the time. The Respondent contends that the Chief Pilot  
15 position was occupied until midnight, November 10, 2005, by  
16 Gregory Wilcox under a 30 day extension granted by POI Kraemer  
17 on October 11, 2005, to continue in his position as Chief Pilot  
18 and exercise operational control.

19 The Respondent contends that Captain Wilcox  
20 authorized the flight on November 10, 2005, under the 30 day  
21 grant of authority that did not expire until midnight November  
22 10, 2005.

23 There is clear evidence in the form of the letter  
24 from Bilal Khan to Inspector Kraemer dated November 8, 2005,  
25 Exhibit A-14, that as of that date at least, Bilal Khan, who  
26 was the President of Aero Leasings, Inc., had relieved Chief  
27 Pilot Wilcox of his duties. Therefore, whether Wilcox knew or



1 not that he had been removed from his position on November 10,  
2 2005, and no longer had authority to initiate or conduct a  
3 flight on that date, in point of fact, he did not have the  
4 authority to take that action, and because both the posts of  
5 the Director of Operations and the Chief Pilot were vacant,  
6 neither did anyone else employed by Aero Leasings have that  
7 authority.

8           Because the Aero Leasings flights on November 10,  
9 2005, as described in the complaint were dispatched and  
10 operated without authorization by anyone authorized to exercise  
11 that authority, the Respondent violated Section 119.51(1) of  
12 the Federal Aviation Regulations.

13           The Administrator contends that the Respondent  
14 allowed P.J. Zeb to exercise control over Respondent's  
15 operations when he was not qualified to do so because he was  
16 neither the Director of Operations nor the Chief Pilot. There  
17 are instances in the evidence when Zeb appeared to make control  
18 type decisions, and among them, as on November 9, 2004, by  
19 telling the mechanic to configure an aircraft to transport  
20 sheep, and on November 10, 2004, assigning Giger to be the  
21 pilot-in-command of the flight on November 10, 2005.

22           With regard to the latter, Wilcox testified that he  
23 told Zeb to turn over the flight to Giger if Giger passed his  
24 flight test which he did. Zeb has not been charged with an  
25 offense in this complaint. He has not had an opportunity to  
26 defend himself. The evidence I have heard is incomplete. He  
27 may have been exercising control or he may have been acting on

1 directions from someone else. There is simply not enough  
2 evidence here to support a finding that he was exercising  
3 control contrary to the General Operations Manual of Aero  
4 Leasings, Inc.

5 The next issue is whether the Administrator has shown  
6 a pattern of regulatory non-compliance that is sufficient to  
7 warrant the imposition of the sanction of revocation which is  
8 the harshest sanction that the FAA can impose.

9 I find that the Administrator has not met that  
10 burden. We have here two flights that are separated by a year.  
11 There were three legs to the second flight, but for the  
12 purposes of this discussion, I am considering them to be one  
13 flight. Both of these flights were dispatched without approval  
14 from the Director of Operations or the Chief Pilot, who are the  
15 only persons who could dispatch the flights.

16 In the first instance, confusion may have resulted  
17 from Gordon's lax and ambiguous manner of communicating  
18 approval, i.e. if he did not specifically disapprove of the  
19 flight, in his mind he considered it approved.

20 In the second instance, although the Respondent, Aero  
21 Leasings' President, Bilal Khan, relieved Chief Pilot Gregory  
22 Wilcox of his duties, as Chief Pilot, at least by November 8,  
23 2005, which was two days before the November 10, 2005 flight,  
24 which Wilcox authorized, there is no evidence to corroborate  
25 that Wilcox knew that he had been removed from his position as  
26 Chief Pilot.

27 Two incidents widely separated by a year, under the

1 circumstances I have just described, are not sufficient to show  
2 a pattern. They are, however, sufficient to show at least a  
3 propensity to ignore regulatory requirements in the provisions  
4 of the Company's own Operations Manual and operations  
5 specifications when it is convenient for the Company or  
6 inconvenient to observe them.

7           This is unacceptable conduct, especially where as  
8 here, the Respondent by its own conduct has created disruption  
9 in the chain of command by not filling various positions for  
10 long periods of time.

11           The Board's decision in Administrator v. Air East  
12 Management, Ltd. d/b/a Air East, NTSB Order Number EA-5089  
13 (2004) is instructive. In that case, which involved a pattern  
14 of non-compliance with Regulations, the Board affirmed  
15 revocation stating at page 6, "The record shows a pattern of  
16 regulatory non-compliance that should not be tolerated.  
17 Regardless of whether Air East was flouting the Regulations to  
18 save money, or simply thought it had other better, faster,  
19 easier ways of doing things, then those set forth in the  
20 Manual, the Administrator is entitled to insist on strict  
21 adherence to her Regulations and Company procedures approved by  
22 the FAA. Certificate holders are not authorized to depart from  
23 approved procedures even if the certificate holder believes the  
24 changes are an improvement."

25           I think that that applies in this case. Likewise  
26 here, the Administrator is entitled to insist on strict  
27 adherence to her Regulations and Company procedures approved by

1 the FAA, and certificate holders are not authorized to depart  
2 from approved procedures even if the certificate holder  
3 believes the changes are an improvement, which is not the  
4 situation here.

5           Although the Respondent's conduct does not rise to  
6   the level of warranting revocation of its air carrier  
7   certification, it shows a callous disregard for regulatory  
8   compliance of its own FAA approved operating procedures, and  
9   warrants a sanction imposing a significant period of  
10  suspension.

11           In this case, I feel a period of suspension of 120  
12   days is appropriate.

13                   Accordingly, upon consideration of all the  
14   substantial, reliable and probative evidence of record, I find  
15   that the Administrator has proven by a preponderance of the  
16   evidence only so much of the complaint as alleges that the  
17   Respondent violated Sections 135.25(a)(2), 135.87 and  
18   119.51(1), and that the Administrator has not proven by a  
19   preponderance of the evidence that the Respondent violated FAR  
20   Sections 119.69(1) and (3).

21 ORDER

Accordingly, it is ordered that the Respondent's appeal is granted in part and denied in part. The Administrator's order shall be modified to provide that the Respondent violated FAR Sections 135.25(a)(2), 135.87 and 119.51(1). The Administrator's order shall be modified with regard to sanction to provide for suspension of all

1 certificates held by the Respondent for a period of 120 days.

2

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4 Dated and Edited on

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WILLIAM A. POPE, II

5 February 1, 2006

Administrative Law Judge

6

APPEAL

7

8 The parties, of course, have a right to appeal my  
9 decision in this case, and I have reduced the appellate rights  
10 of the parties to writing and I have a copy for the  
11 Administrator and for the Respondent.

12 If counsel would come forward, I will give it to you.

13 MS. FULLER: Thank you, Your Honor.

14 MR. WINTON: Thank you.

15 ADMINISTRATIVE LAW JUDGE POPE: And I'll ask the  
16 Reporter to mark another copy as ALJ Exhibit 1.

17 (Whereupon, the document referred  
18 to as Administrative Law Judge's  
19 Exhibit No. ALJ-1 was marked and  
received into evidence.)

20 ADMINISTRATIVE LAW JUDGE POPE: Is there anything  
21 further to come before me in connection with this case by the  
22 Respondent -- by the Administrator?

23 MS. FULLER: No, Your Honor. Thank you.

24 ADMINISTRATIVE LAW JUDGE POPE: By the Respondent?

25 MR. WINTON: If I may, Judge, I recall during the  
26 middle of the hearing when I did renew my motion to dismiss  
27 those charges which were stale, you did indicate, although

1 you're not dismissing the charges as stale, you would be  
2 mindful that if you did find a violation of that November 9,  
3 2004 flight, you will not be associating any suspension period  
4 along with those violations. I'm just wondering as we get 120  
5 days for one flight on November 10, 2005, which you indicated  
6 was an oversight and you believed that Captain Wilcox was not  
7 aware that he was relieved from his duties, if that suspension  
8 has considered the previous flight.

9 ADMINISTRATIVE LAW JUDGE POPE: You are quite  
10 correct. I did say that. And I did not consider the November  
11 9, 2004 flight in determining the -- what I considered to be  
12 the appropriate sanction. I considered only the latter flight,  
13 and based upon that and the fact that the Respondent seems to  
14 follow its General Operations Manual and its operations  
15 specifications when it's inconvenient and not when it's  
16 inconvenient, I felt a significant period of suspension was  
17 warranted in order to persuade the Respondent to comply with  
18 the regulations and with its own General Operations Manual and  
19 its operations specifications.

20 MR. WINTON: It's my understanding, that your reading  
21 was you felt the 2005 flight was confusion on the part of the  
22 Captain, that he did not know, was not aware and didn't have  
23 reason to know that he had been relieved from his duties.

24 ADMINISTRATIVE LAW JUDGE POPE: I did not attach any  
25 blame to the Captain. I said that the Respondent -- I really  
26 am not sure I want to go much further on this.

27 MR. WINTON: Sure.

1           ADMINISTRATIVE LAW JUDGE POPE: My decision is that  
2 the Respondent is responsible for the actions of its employees.  
3 In this particular case, if the Respondent failed to tell its  
4 employee, in this case the pilot, the Chief Pilot, that he was  
5 being removed from his position, and the Chief Pilot in  
6 ignorance of that fact went on ahead and exercised the  
7 authority of that position, then the Respondent is responsible  
8 for those actions.

9           So here I said, I believe I said, that it was not  
10 absolutely certain that the Chief Pilot knew that he had been  
11 removed but it was not relevant because the Respondent knew it  
12 and created a situation which he continued to act in that  
13 position.

14           MR. WINTON: Understood. Thank you for the  
15 clarification, Judge.

16           ADMINISTRATIVE LAW JUDGE POPE: Anything further from  
17 the Administrator?

18           MS. FULLER: No, Your Honor. Thank you.

19           ADMINISTRATIVE LAW JUDGE POPE: All right. If  
20 there's nothing else then, the record is closed.

21           (Whereupon, at 4:05 p.m., the hearing in the above-  
22 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the  
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:           Aero Leasings, Inc.

DOCKET NUMBER:           SE-17625

PLACE:                   Miami, Florida

DATE:                   January 26, 2006

was held according to the record, and that this is the  
original, complete, true and accurate transcript which has  
been compared to the recording accomplished at the hearing.

Free State Reporting, Inc.  
(410) 974-0947



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Edna Hollander  
Official Reporter

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Kathryn A. Mirfin  
Transcriber